



# CITY OF LODI COUNCIL COMMUNICATION

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**AGENDA TITLE:** Ordinance No. 1818 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by Repealing and Reenacting Chapter 12.07 Relating to the Lodi Tourism Business Improvement District (LTBID)"

**MEETING DATE:** February 4, 2009

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1818.

**BACKGROUND INFORMATION:** Ordinance No. 1818 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by Repealing and Reenacting Chapter 12.07 Relating to the Lodi Tourism Business Improvement District (LTBID)," was introduced at the regular City Council meeting of January 21, 2009.

**ADOPTION:** With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**  
This ordinance has been approved as to form by the City Attorney.

**FISCAL IMPACT** None.

**FUNDING AVAILABLE:** None required.

Randi Johl  
City Clerk

RJ/jmp  
Attachment

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APPROVED:

ity Manager

ORDINANCE NO. 1818

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING  
LODI MUNICIPAL CODE TITLE 12 –STREETS, SIDEWALKS, AND PUBLIC  
PLACES – BY REPEALING AND REENACTING CHAPTER 12.07 RELATING  
TO THE LODI TOURISM BUSINESS IMPROVEMENT DISTRICT (LTBID)

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Title **12** – Streets, Sidewalks, and Public Places – of the Lodi Municipal Code is hereby amended by repealing and reenacting Chapter 12.07 in its entirety relating to the Lodi Tourism Business Improvement District (LTBID) and shall read as follows:

Chapter 12.07 LODI AREA TOURISM BUSINESS IMPROVEMENT DISTRICT

SECTIONS:

- 12.07.010 Authority
- 12.07.020 Resolution of Intention
- 12.07.030 Resolution of Intention, Notice, Hearing, and Protest
- 12.07.040 Definitions
- 12.07.050 Established—Name
- 12.07.060 Description of Boundaries
- 12.07.070 Levy of Assessment—Use of Proceeds
- 12.07.080 Annual Review of Assessments
- 12.07.090 Levy of Assessment—Amount
- 12.07.100 Levy of Assessment—Use of Revenue—Authority
- 12.07.110 Assessment—Calculation of Taxes
- 12.07.120 Records
- 12.07.130 Levy of Assessment—Collection, Delinquency, and Penalty

12.07.010 Authority.

The proceedings herein are taken pursuant to the authority of the Parking and Business Improvement Area Law of 1989, codified as California Streets and Highways Code Sections 36500 through 35551, inclusive. The hotels within the boundaries of the district established by this Ordinance shall be subject to any amendments of the Parking and Business Improvement Area Law of 1989.

12.07.020 Resolution of Intention.

This chapter is adopted pursuant to the Resolution of Intentions (Resolution No. 2004-191 and Resolution No. 2008-229) adopted by the Lodi City Council on September 15, 2004 and November 19, 2008, respectively, pursuant to the authority of the Parking and Business Improvement Area Law of 1989.

12.07.030 Resolution of Intention, Notice, Hearing, and Protest.

A. Resolution of Intention No. 2004-191 was published and mailed as provided by law, and a public hearing thereon was held by the City Council on October 6, 2004, at 7:00 p.m. before the City Council in the Chambers of the Lodi City Council at the Carnegie Forum, 305 West Pine

Street, Lodi, California. A protest against the proposed formation of "Lodi Tourism Business Improvement District" has not been made by businesses which will pay fifty percent or more of the proposed assessment. All protests, both written and oral, are overruled and denied and the City Council finds that there is not a majority protest within the meaning of Sections 36524 and 36525 of the California Streets and Highways Code.

B. Resolution of Intention No. 2008-229 was published and mailed as provided by law, and a public hearing thereon was held by the City Council on January 21, 2008, at 7:00 p.m. before the City Council in the Chambers of the Lodi City Council at the Carnegie Forum, 305 West Pine Street, Lodi, California. A protest against the expansion of the "Lodi Area Tourism Business Improvement District" has not been made by businesses which will pay fifty percent or more of the proposed assessment. All protests, both written and oral, are overruled and denied and the City Council finds that there is not a majority protest within the meaning of Sections 36524 and 36525 of the California Streets and Highways Code.

#### 12.07.040 Definitions

For the purposes of this chapter, the following definitions apply:

- a. "Finance Director" means the director of finance for the city or his/her designated representative.
- b. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, including, but not limited to, any hotel, inn, bed and breakfast, tourist home or house, motel, studio hotel, bachelor hotel, lodging-house, or other similar structure or portion thereof.
- c. "Short Term Room Rental" shall mean occupancies that last less than 30 consecutive calendar days.
- d. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

#### 12.07.050 Established—Name.

There is hereby established a parking and business improvement area, which shall be known as the "Lodi Area Tourism Business Improvement District," hereinafter for brevity and convenience sometimes referred to as "LTBID."

#### 12.07.060 Description of Boundaries.

The boundaries of the LTBID shall be the boundaries of the City of Lodi and County Service Area #31 ("Flag City").

#### 12.07.070 Levy of Assessment—Use of proceeds.

The improvements and activities to be provided in the LTBD will be funded by the levy of the assessments. The City Council hereby finds that the hotels within the business and improvement area will be benefited by the improvements and activities funded by the assessments to be levied. The revenue from the levy of assessments within the LTBD shall not be used to provide improvements or activities outside the LTBD or for any purpose other than the purposes specified in the Resolution of Intention. The proceeds from the LTBD assessment, as hereinafter provided, shall be used to administer marketing programs to promote the District as a tourism destination and to fund projects, programs, and activities that benefit hotels within the District.

#### 12.07.080 Annual Review of Assessments.

All of the assessments imposed pursuant to this chapter shall be reviewed by the City Council annually, based upon the annual reports prepared by the advisory board appointed pursuant to this chapter and Sections 36530 and 36533 of the California Streets and Highways Code. The annual report shall include a budget for operations and a detailed identification of the marketing efforts to be undertaken by the LTBD for the ensuing calendar year.

#### 12.07.090 Levy of Assessment—Amount.

The proposed LTBD will include all hotels within the District. The assessment shall be levied on all hotels, existing and future, within the District based upon 3% of the gross Short Term Room Rental revenue. Except where funds are otherwise available, an assessment will be levied annually to pay for the improvements and activities within the area and will be collected quarterly based on 3% of the gross Short Term Room Rental revenues for the previous quarter. New hotels within the boundaries will not be exempt from the levy of assessment pursuant to Section 36531 of the California Streets and Highways Code. Assessments pursuant to the LTBD shall not be included in gross room rental revenue for purpose of determining the amount of the transient occupancy tax.

#### 12.07.100 Levy of Assessment—Use of revenue—Authority

An advisory board shall be appointed by the City Council to make recommendations concerning the operation and extent of the LTBD and the methods and ways the revenue derived from the assessment imposed by this chapter shall be used within the scope of the purposes set forth in Section 12.07.070, and to incur obligations against the funds derived from the assessment only according to policy guidelines the City Council from time to time may establish and direct, and to perform only such other powers and duties as the Council from time to time may determine and direct. The City Council shall annually approve a budget, which shall include a program of activities intended to carry out the purposes set forth in Section 12.07.070, accompanied with an estimate of expenditures.

#### 12.07.110 Assessment – Calculation of Taxes

The assessment imposed by this Ordinance is levied upon the hotels within the district, and the operator of each hotel shall be solely responsible for paying all assessments when due. Notwithstanding the foregoing, in the event that the operator of a hotel elects to pass on some or all of the assessment to customers of the hotel, the operator of the hotel shall separately identify or itemize the assessment on any document provided to a customer. Assessments levied on the operators of hotels pursuant to this Ordinance and passed on to customers are not part of a hotel's gross receipts or gross revenues for any purpose, including the calculation of sales or use tax, transient occupancy tax, or income pursuant to any lease. However, assessments that are passed on to customers shall be included in gross receipts for purposes of income and franchise taxes.

#### 12.07.120 Records.

It shall be the duty of every operator of a hotel liable for the collection and payment to the applicable city or the county of any assessment imposed by this chapter to keep and preserve for a period of three years all records as may be necessary to determine the amount of such assessment as he may have been liable for the collection of and payment to the applicable city or the county, which records the applicable city or the county shall have the right to inspect at a reasonable time and following twenty-four **(24)** hour prior written notice.

#### 12.07.130 Levy of Assessment--Collection, Delinquency, and Penalty.

The collection of the assessment imposed by this chapter shall be made on a quarterly basis from hotels within the District . The City of Lodi will collect the assessment on the same form as that used for the collection of Transient Occupancy Tax receipts. Each operator shall, on or before the last day of each quarter, make a report to the Finance Director on forms provided by city of the amount of assessment due for that quarter. The report and amount become delinquent twenty days after they are due. The full amount of the assessment calculated shall be remitted to the Finance Director at the time the return is filed. The Finance Director may establish shorter reporting or remitting periods for any operator and may require additional information in any return. Returns and payments are due immediately upon cessation of business for any reason. Each return shall contain a declaration under penalty of perjury, executed by the operator or its authorized agent, that, to the best of the declarant's knowledge, the statements in the return are true, correct, and complete.

Any operator who fails to remit any assessment imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the assessment in addition to the amount of the assessment. Any operator who fails to remit any delinquent remittance on or before the 15th day of the month following date of the first penalty shall pay a second delinquency penalty of ten percent of the amount of the assessment in addition to the amount of assessment and ten percent penalty first imposed.

If the Finance Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the assessment shall be added thereto in addition to the penalties stated above.

In addition to the penalties imposed, any operator who fails to remit any assessment imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

Every penalty imposed and such interest as accrued under the provisions of this section shall become a part of the assessment required to be paid by this chapter.

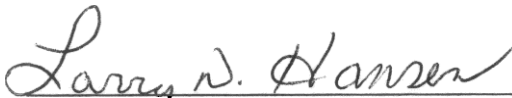
SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care toward persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 4<sup>th</sup> day of February, 2009

  
LARRY D. HANSEN  
Mayor

Attest:

  
RANDI JOHL  
City Clerk

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State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1818 was introduced at a regular meeting of the City Council of the City of Lodi held January 21, 2009, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held February 4, 2009, by the following vote:

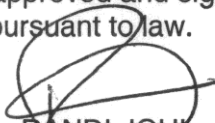
AYES: COUNCIL MEMBERS - Hitchcock, Johnson, Katzakian, Mounce, and Mayor Hansen

NOES: COUNCIL MEMBERS - None

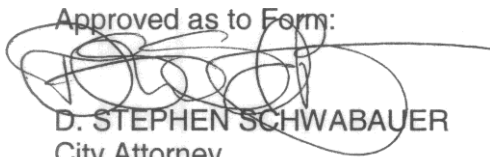
ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None

I further certify that Ordinance No. **1818** was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

  
RANDI JOHL  
City Clerk

Approved as to Form:

  
D. STEPHEN SCHWABAUER  
City Attorney